

Massachusetts Bar Association

Annual Address

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Thank you, President Campbell, for that nice introduction.

Members of the judiciary, members of the executive and legislative branches, officers and members of the Massachusetts bar association, colleagues, and friends.

I begin my remarks with some positive news on the budget front. Last week, the Massachusetts House of Representatives proposed, and the Senate agreed to, a supplemental appropriation for the Trial Court. We are hopeful -- very hopeful -- that the legislation will be enacted and that Governor Patrick will approve the appropriation. I encourage you to let our leaders know how important these funds are to all who use our courts. I extend my thanks -- my deep appreciation and gratitude -- to House Speaker Robert DeLeo -- who is with us today -- to Senate President Therese Murray, the Chairs of the Senate and House Ways and Means Committees, and to the members of the House and Senate for supporting these additional funds. Legislative support for funding a fair, efficient, and accessible system of justice is particularly noteworthy in this time of severe fiscal constraint.

In Massachusetts, approximately 42,000 court users come to more than 100 courthouses every day to seek justice. They look for protection from abuse. Sanitary housing. Vindication of civil rights. Protection of private property. Public safety. I do not minimize the very heavy toll that multiple years of budget reductions and a three-year freeze on hiring have taken on our dedicated judges and court staff, and on the public. I know we are not out of the woods. Fiscal Year 2012, and beyond, will continue to present many challenges for the courts. Nevertheless, it takes courage in these difficult times to approve additional funding. I applaud Speaker DeLeo, President Murray, and hopefully, Governor Patrick for their support for the courts.

I would like to share some other positive developments. As many of you know, the National Center for State Courts, a respected voice for the interests of State judiciaries, awarded two of its top honors to members of the Massachusetts Court system.

First, on unanimous nomination by the Justices of the Supreme Judicial Court, Appeals Court Justice James McHugh has been awarded the 2011 William H. Rehnquist Award for Judicial Excellence. His efforts on issues ranging from information technology and caseflow management to judicial ethics have improved the court system for the public and for those who work in the courts. I have known Jim McHugh for many years. I am honored to call him a colleague and a friend. In twenty-six years on the bench, he has distinguished himself as a consummate jurist, a big-picture thinker, a driving force for court reform, and a consensus builder. Justice McHugh will leave the Massachusetts judiciary stronger than he found it. On behalf of the entire judiciary, I extend sincere thanks to Justice McHugh for his exemplary public service, and congratulate him for receiving this prestigious award.

Earlier today, Jury Commissioner Pamela Wood, the Office of the Jury Commissioner, and the Jury Management Advisory Committee were honored with the National Center's 2011 G. Thomas Munstermann Award for Innovations in Jury Management. It, too, is recognition well deserved. Under the leadership of Chief Justice Mulligan, Commissioner Wood, the Jury Management Advisory Committee, and the Office of Jury Commissioner have made major improvements in procedures and technology that help jurors and the court system. And for the first time in twenty years we have a new, first-rate juror information video. And I don't say that just because I'm in it. It is gratifying to see the hard work of Commissioner Wood and the Members of the Jury Management Advisory Committee recognized at the national level.

Justice McHugh, Commissioner Wood, and the Members of the Jury Management Advisory Committee are innovators. Their work reminds us that the judicial branch is at a turning point. Many of the old ways of doing business are gone. Transparency is replacing mystery. Performance measurement is informing management decisions. Collaboration is replacing isolation. Technology is driving new and better ways to work and reach out to the bar and the public. And fiscal vigilance is not just the product of current hard economic times; it has become an institutional value. How we in the judiciary handle these changes will affect the quality of justice in the Commonwealth for years to come. We cannot be paralyzed by unfolding events, but must embrace them as new opportunities.

I am confident we will move forward. In fact, we are moving forward to implement measures to strengthen accountability in our courts. In response to the report of the independent counsel on the Probation Department, the Justices appointed a task force for hiring in the judicial branch, chaired by former Attorney General Scott Harshbarger. The task force has produced a series of thoughtful reports -- and reforms that they recommended are already underway.

Less than one year ago when I became Chief Justice, I announced three areas of focus that I hope will allow the judiciary to maintain its standards of excellence. They are: building bridges to court constituencies, making courts more responsive to the public, and educating the public, particularly our youth. In the remainder of my time today, I would like to address each of these priorities.

First, building bridges. Everyone in Massachusetts has a stake in the fair and efficient administration of justice. Everyone has a role to play in securing that result. As the head of the judicial branch, I am committed to reaching out, bringing people together, cementing old

alliances, and building new ones to improve the delivery of justice. All three branches of government seek a fair and well-functioning court system. It has been my privilege to work closely with the Governor and members of the Legislature on the issues of court resources and management. The court management legislation passed by the Legislature in August is a milestone. It re-engineers the management structure of the Trial Court to provide professional managerial support to judges and court staff. The new law keeps the Office of the Commissioner of Probation within the judiciary. The Probation Department has a long, successful history of service within the court system, as probation officers play a vital role in the courts and communities. The legislation strengthens the mechanisms of accountability and transparency. In implementing the legislation, and in general, the Justices and I will continue to develop opportunities for frank and open discussion with our counterparts in the other branches.

Earlier this year, the Justices convened an orientation session to educate new legislators about the operations and needs of our courts. Now we are exploring an educational program to inform legislative staff about services available through the courts. We are always available to meet with the Governor and leaders and members of the Legislature on issues affecting the courts. The three branches may not always see eye-to-eye on what is best for the court system, but we all want the best for the people of the Commonwealth, and the groundwork for mutual trust and cooperation is strong.

I am also determined to strengthen relationships within the judiciary itself. The work of justice is people intensive. It always will be. The greatest assets of the judicial branch are its dedicated judges and court staff, who rarely get the recognition they deserve. The Justices have partnered with the Massachusetts Judges Conference -- whose President, Judge Jim Collins, we

just heard from -- to make the case for more funding for Trial Court judges, who serve on the front lines of justice. We meet with Chief Justice Mulligan and the Departmental Chief Justices on matters of Trial Court administration and judicial policy. As statutory reorganization of the management of the courts proceeds, we have solicited and will continue to solicit input from Trial Court managers, judges, clerks and registers, the organized bar and other key stakeholders, including the business community. I was, by the way, particularly pleased that this year, for the first time, legal counsel from thirty-five of the largest corporations in the Commonwealth also submitted a letter to the Legislature in support of the judiciary's budget request.

And now I would like to speak directly to court staff. I know that there are fewer of you, and I know that you are being asked to do more and more with fewer resources. Whether you provide assistance at the counter, keep our courthouses clean, ensure the safety of the courthouse and its occupants, serve as administrators, translators, information technology specialists or financial experts – you are the unsung heroes of the judicial branch. Without you our system of justice would grind to a halt. During the past year, I have made it a priority to visit courthouses around the Commonwealth to meet and thank the dedicated men and women who support the work of our judges. I urge members of the bar to follow my example . Say your own "thank-you" to the women and men responsible for so much of the work of delivering justice .

I turn now to my second priority: broadening access to justice. We in the judicial branch must provide justice to the community as we find it. Not the community as we once knew it or the community we might wish it to be. Today, an overwhelming number of people who seek justice in our busiest courts come without an attorney. Many come terrified of losing custody of

their children or possession of their house or apartment. Many find courts and court procedures alien and mysterious. Increasing numbers of unrepresented litigants do not speak English well enough to state their case or understand what the judge expects of them. It is not the job of these litigants, or any litigants, to make it easy for judges and court staff. It is the duty of the judicial branch to make our courts more welcoming. Just as we created the Business Litigation Session in response to the needs of modern enterprise, we must make it possible for those who have been historically under-served – people of color, immigrants, the poor and the disabled – to find justice. Our Access to Justice Commission, co-chaired by Justice Ralph Gants and Attorney David Rosenberg, provides leadership to the many entities involved in expanding access to justice.

The first priority, always, is to try to connect unrepresented litigants to attorneys, for all litigants can benefit from the expertise of a trained legal professional. Innovative pro bono programs run by bar organizations throughout the Commonwealth provide much-needed, on-the-spot, legal help to unrepresented litigants. But the judiciary, too, has a role in connecting litigants with attorneys. The Supreme Judicial Court has approved a rule permitting limited access representation in the Trial Court departments. Additionally, under the Trial Court's access to justice initiative, headed by special advisor Judge Dina Fein, and with the full support of Chief Justice Mulligan and the Departmental Chief Justices, courthouse information desks have opened in the Brooke Courthouse in Boston, in the Worcester Courthouse, and soon in Springfield, and in multi-court courthouses around the Commonwealth. Information desk volunteers, mainly undergraduate students interested in legal careers, are trained to direct court users to attorney referral lists and to inform court users about the availability and benefits of limited assistance

representation. Self-help publications issued by the Justices advise people of the benefits of being represented by an attorney.

Yet we all know that there are not enough lawyers to meet the civil justice needs of low-income litigants. And a significant number of people will want to "go it alone" for other reasons. Unrepresented litigants, who are unfamiliar with the court system, can create delay in the delivery of justice and drive up costs, as attorneys well know. Again, the judiciary is trying to help. The Trial Court law libraries are a great source of information for attorneys and the unrepresented alike. The Trial Court has received a grant from the State Justice Institute to translate small claims forms into multiple languages, and the Probate and Family Court financial statement, so critical in family matters, is now available in Spanish and Portuguese.

On another front, the Judicial Institute, as part of the access to justice initiative, is conducting statewide training for court staff on serving unrepresented litigants, and Appeals Court Justice Cynthia Cohen is convening a judicial conference, planned for the spring, on managing cases involving unrepresented parties. And these are just a few examples of how, in these difficult times, court workers are stepping up to do more with less.

We are harnessing technology, as well, to broaden access. I applaud Chief Justice Philip Rapoza's E-notification initiative for simplifying and accelerating the delivery of justice in the Appeals Court. The Trial Court has begun to explore e-filing as a complement to electronic case management. We cannot let fiscal constraints stop us from broadening access to justice, and what is good for unrepresented litigants is good for attorneys, and good for the administration of justice. Making the Massachusetts court system more user friendly is not only a matter of equal justice, it is just plain good business practice.

Of course, it is important for the public, for government officials, and for us in the legal profession to have reasonable expectations. When I became Chief Justice, I admitted I did not have a magic wand that would solve all our problems. I still don't have one. Even if resources were plentiful, courts cannot solve widespread social and economic problems, nor in a constitutional democracy would we want them to do so. And legal cases are not like widgets – they can be unpredictable – and they often don't run like clockwork. But we in the judicial branch are trying our best in very tough times to bring timely justice to the people of Massachusetts. We will continue to try our best, within our proper sphere and considering the restraints over which we have little control.

Even the most efficient, most fair court system cannot survive long without the respect of the public. And so I come to my third priority: public education, particularly of our youth. We find ourselves at a time when few people can correctly identify the three branches of government. In Massachusetts and elsewhere, there is widespread public misunderstanding about the role of judges and the importance of an independent judiciary. I want to make the judicial branch a force in civic education, particularly about the role of courts and the rule of law, and especially for young people. The John Adams Courthouse has become a center of learning about the Massachusetts Constitution and its rich history. Students, teachers, and members of the public come here to observe oral arguments, speak with judges, view the exhibits in the great hall, and attend plays about historic events.

As many of you know, I have been deeply involved in a program called the Judicial Youth Corps since its inception more than twenty years ago. It provides opportunities for urban youth, many of whom are from disadvantaged backgrounds, to meet and work with judges and

court staff, who volunteer their time. Students learn about the importance of courts and the rule of law and the legal profession. I have seen the power of thoughtful mentoring to unlock the potential of young people, and I appreciate the support of the Massachusetts Bar Foundation over the years for this program. Judicial Youth Corps graduates from Boston, Worcester, and Springfield have succeeded in college and beyond. The first wave of Youth Corps graduates are now lawyers, business people, contributors to their community. I dearly hope some will become judges. The MBA's own tiered mentoring program, developed by Judge Angela Ordoñez, is another important initiative to teach young people about the law and encourage minority youth to consider legal careers. Law Day celebrations give local judges the opportunity to connect with schools and community groups. Undergraduate students learn about the law by volunteering at the courthouse information desks. By these projects and many others, we in the judiciary and the organized bar enrich the legal profession in an era of increasing social, cultural, and economic diversity. I thank all of you who contribute to teaching our young people about the law and the importance of courts to our everyday lives .

I have been Chief Justice for nearly one year, but I've been a judge for thirty-four years. I start my thirty-fifth year next month. I can think of no higher honor, nor anything more humbling, than to serve the people of this Commonwealth by delivering justice and upholding the rule of law. I am hopeful and confident that the courts will weather these difficult economic times because every day I see people of good will working so hard to keep our courts strong. First among them are my colleagues on the Supreme Judicial Court. I am fortunate that each of them is willing to take on so many additional tasks. Justice Spina, Justice Cordy, Justice

Botsford, Justice Gants, Justice Duffly, and Justice Lenk – I want to say that I couldn't do this job without you. Thank you.

In closing, I again want to thank the legislative leadership for their support with the supplemental budget, and I extend my hearty congratulations to the Massachusetts bar association as you embark on a second century of service. Every day your leaders and your members strive to uphold the principles of fair and equal justice, in courtrooms, in boardrooms, and in classrooms across the Commonwealth. The MBA is a great resource for the people of Massachusetts.

And as you know, it is the public who in the final analysis sustain an independent judiciary. Justice Thurgood Marshall once said, "We must never forget that the only real source of power we as [courts] can tap is the respect of the people."¹ Nurturing that respect is a matter of upholding the integrity and perceived integrity of our courts. But it is also a matter of actively reaching out to the public. I applaud President Campbell for identifying as his signature priority educating the public about the importance of a well-functioning judicial branch. I commend all of you for the MBA's proud tradition of strong alliance with the courts. We continue, more than ever, to need your help.

Thank you.

¹ Judges Must Strive for Neutrality, *Chicago Tribune*, Aug. 15, 1981, at 7, quoted at, e.g., www.courts.state.md.us/publications/pdfs/thurgoodl.pdf.